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SENATE

REPORT
No. 97-560

PROVIDING FOR THE CONVEYANCE OF CERTAIN LANDS IN ALASKA COMPRISING TRADE AND TRADE MANUFACTURING SITE A-056802 WITHOUT REGARD TO EXISTING LAW

SEPTEMBER 20 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. BAKER (for Mr. MCCLURE), from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 1281]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1281), to provide for the conveyance of certain lands in Alaska comprising trade and trade manufacturing site A-056802 without regard to the eighty-rod limitation provided by existing law, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE LAW

H.R. 1281, as reported, would facilitate acquisition by an individual claimant of approximately 6.27 acres of land located on a peninsula separating two navigable lakes in western Alaska.

BACKGROUND AND NEED

In 1967, Gayle Curtis applied to purchase the property in question under the Act of May 14, 1898 (43 U.S.C. 687), which allows certain U.S. citizens, associations of citizens or corporations to purchase one "trade and manufacturing" site in Alaska which they possess and occupy. The 1898 Act specifies that purchase of such a site depends on the climant's showing that the area is improved and is needed to maintain the claimant's trade, manufacturing, or other productive in-

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dustry. It also imposes an overall limit of 80 acres which can be included in any one such purchase, and further specifies that a purchased tract may include no more than 80 rods (1,320 feet) of navigable shoreline.

While the claim in question here involves only 16.33 acres its location on a peninsula means that it involves some 6,820 feet of navigable shoreline. Accordingly, BLM and then the Interior Board of Land Appeals determined that under the shoreline restrictions of the 1898 Act, the applicant was entitled to purchase only 10.06 acres.

H.R. 1281, as reported, would authorize the Secretary of the Interior to reconsider and act on trade and manufacturing claim application A-056802, made under section 10 of the Act of May 14, 1898, as amended (43 U.S.C. 687a), without regard to the 80-rod limitation contained in the first proviso of that section (30 Stat. 413). The claim is for approximately 16.33 acres of land in the State of Alaska. H.R. 1281, as reported would direct the Secretary to require payment of fair market value as of the date of filing of the claim application, but excluding the value of any enhancement of the land, for any acreage in excess of that to which he determines the claimant would have been entitled under section 10, the 80-rod limitation. H.R. 1281, as reported, would allow the Secretary to convey lands to the claimant only after the State of Alaska has conveyed to the United States any and all right, title, and interest it may hold in that portion of the lands which were selected under the Alaska Statehood Act of July 7, 1958, and which have been tentatively approved for patent.

In reviewing the situation addressed by this bill, the Committee was of the opinion that the facts supported a conclusion that there were sufficient equities on the part of the claimant to justify making an exception to the usual limitations of the Act as regards purchase of shoreline areas. The 80-rod limit on such purchases is intended to preserve public access to navigable waters by preventing excessive private appropriation of shorelines. Since the remaining shoreline near this site has been transferred to the State of Alaska, adequate public access to the waters will apparently not be significantly impaired by waiver of the 80-rod limit to the extent contemplated by this bill.

LEGISLATIVE HISTORY

H.R. 1281 passed the House on December 15, 1981. The Public Lands and Reserved Water Subcommittee received testimony on H.R. 1281 on July 27, 1982. The administration supports the enactment of H.R. 1281 if amended as indicated in testimony before the Subcommittee. At a business session on September 15, 1982, the Committee on Energy and Natural Resources ordered H.R. 1281 favorably reported without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources in open business session on September 15, 1982, by a majority vote of a quorum present recommends that the Senate pass H.R. 1281 without amendment.

The rollcall vote on reporting the measure was 12 yeas, 1 nay as follows:

YEAS	NAYS
Mr. McClure	Mr. Metzenbaum
Mr. Hatfield	
Mr. Domenici	
Mr. Wallop	
Mr. Warner [1]	
Mr. Humphrey [1]	
Mr. Murkowski	
Mr. Nickles	
Mr. Jackson	
Mr. Bumpers	
Mr. Ford	
Mr. Melcher	

[1] Indicates voted by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1 authorizes the Secretary of the Interior to reconsider and act upon the specified application for a trade and manufacturing site without regard to the 80-rod shoreline limitation imposed by the basic trade and manufacturing site Act of May 14, 1898.

Section 2 directs the Secretary of the Interior to require payment of fair market value for the approximately 6.27 acres authorized for conveyance by this bill which would otherwise not be available for conveyance under the 1898 Act and specifies that fair market value shall be determined as of the date of the claimant's application for the tract and shall not include the value of any enhancement of the land in question.

Section 3 provides that conveyance to the claimant of the tract in question shall occur only after the State of Alaska has transferred to the United States all right, title, and interest that the State may have and warrants that it has not alienated any of those interests to third party. It also authorizes the State to make such a conveyance with regard to this specific area.

COST AND BUDGETARY CONSIDERATIONS

The Committee does not anticipate any additional budgetary impact from enactment of H.R. 1281, to provide for the conveyance of certain lands in Alaska comprising trade and trade manufacturing site A–056802 without regard to the eighty-rod limitation provided by existing law.

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 16, 1982.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirkson Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

H.R. 1281, a bill to provide for the conveyance of certain lands in Alaska comprising trade and trade manufacturing site A–056802 without regard to the eighty-rod limitation provided by existing law, as ordered reported by the Senate Committee on Energy and Natural Resources, September 15, 1982.

This bill waives a statute prohibiting the sale of a parcel of land with more than 80 rods of shoreline, in order to allow the sale of a particular parcel of 16.33 acres of land in Alaska. Based on information from the Bureau of Land Management, it is expected that no additional cost to the federal government would be incurred and a small amount of income will be received as a result of enactment of this legislation.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1281, as reported.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

H.R. 1281, as reported, would facilitate acquisition by an individual claimant of approximately 6.27 acres of land located on a peninsula separating two navigable lakes in western Alaska.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of H.R. 1281.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to H.R. 1281 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., January 27, 1982.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We submit for your Committee's consideration, the views of this Department on H.R. 1281, as passed, a bill "To provide for the conveyance of certain lands in Alaska comprising trade and trade manufacturing site A–056802 without regard to be eighty-rod limitation provided by existing law."

H.R. 1281, as passed, would authorize the Secretary of the Interior to reconsider and act on trade and manufacturing claim application

A–056802, made under section 10 of the Act of May 14, 1898, as amended (43 U.S.C. 687a), without regard to the 80-rod shoreline limitation contained in the first proviso of that section (30 Stat. 413). The claim is for approximately 16.33 acres of land in the State of Alaska. H.R. 1281, as passed would also direct the Secretary to require payment of fair market value as of the date of filing of the claim application, but excluding the value of any enhancement of the land, for any acreage in excess of that to which he determines the claimant would have been entitled under the section 10 80-rod limitation. Finally, H.R. 1281, as passed, would allow the Secretary to convey lands to claimant only after the State of Alaska has conveyed to the United States any and all right, title, and interest it may hold in that portion of the lands which were selected under the Alaska Statehood Act of July 7, 1958, and which have been tentatively approved for patent.

We would have no objection to the enactment of H.R. 1281, as passed, if it is amended as suggested below.

The Act of May 14, 1898, allows certain United States citizens, associations of citizens, or corporations, who are in possession of and occupying lands in Alaska for the purpose of trade, manufacturing, or other productive industry, to purchase one claim of land not to exceed 80 acres. However, a claim may include navigable shoreline of no more than 80 rods (1,320 feet). To purchase a claim, a claimant must show that the area is improved and is needed to maintain the claimant's trade, manufacturing, or other productive industry.

Trade and manufacturing claim application A–056802 was filed in 1967 for approximately 16.33 acres of land on a peninsula separating two navigable lakes. Because that claim was for land on a peninsula, it included a disproportionate amount of shoreline—approximately 413.3 rods. This Department considered and subsequently rejected the claim under the Act of May 14, 1898, because it exceeded the Act's 80-rod limitation. We determined that the claimant was entitled to a patent for only 10.06 of the approximately 16.33 acres of land claimed.

The purpose of the 80-rod shoreline limitation in the 1898 Act is to preserve public access to the Alaska shoreline by preventing the appropriation of extensive amounts of shoreline by one private interest. Although the conveyance authorized by H.R. 1281, as passed, would in fact, violate that limitation, we do not believe it would violate the purpose for which the shoreline limitation was included in the 1898 Act. We believe that the circumstances of this claim on peninsular land, with its disproportionate amount of shoreline, are unique, and that the conveyance would not result in the appropriation of an extensive amount of shoreline by one private interest. Furthermore, we note that all contiguous land is owned and used by the State of Alaska under a 1961 Statehood Selection, so none of the remaining shoreline near the claim is available for appropriation.

We recommend, however, that the fair market value of the lands to be conveyed by H.R. 1281, as passed—the 6.27 acres which, in addition to the 10.06 acres mentioned above, make up the 16.33 acre claim—be determined as of the date of enactment of the bill, rather than as of the date of the filing of the claim application, as H.R. 1281, as passed, provides. We prefer the date of enactment of this bill for the fair market value determination because on that date, notwithstanding

the limitation of the Act of May 14, 1898, the claimant would be eligible to claim the extra 6.27 acres, and because that date is the usual date for determining fair market value in situations similar to this.

If amended as indicated, we would not object to enactment of H.R. 1281, as passed.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. ROBINSON WEST,
Assistant Secretary.

MINORITY VIEWS OF SENATOR METZENBAUM

This bill would provide for the Secretary of the Interior to convey certain lands in Alaska comprising a trade and manufacturing site to a private party without regard to the eighty-rod shoreline limitation contained in the Act of May 14, 1898.

The 80-rod shoreline limit on such conveyances was imposed by the Congress to preserve public access to navigable water by preventing excessive private appropriation of shorelines. In this case, the claimant is seeking to acquire some 16.33 acres. The Bureau of Land Management has determined that under the shoreline restrictions of the 1898 Act, the applicant was entitled to purchase only 10.06 acres.

I have no quarrel with conveyance of the additional 6.27 acres. The remaining shoreline near this site has been transferred to the state of Alaska and public access to the water will apparently not be significantly impaired by waiver of the 80-rod limit to the extent contemplated by this bill.

I am strongly opposed, however, to the provision of H.R. 1281 permitting the claimant to acquire this additional land at less than today's fair market value. The bill would permit the claimant to purchase this 6.27 acres at fair market value as of the date the claim was filed, 1967. That has not been the policy of this Committee in the past, and it is not the policy of the Department of the Interior. On this particular measure, the Department testified before the Committee that:

> We prefer the date of enactment of this bill for the fair market value determination because only on that date, notwithstanding the limitation of the Act of May 14, 1898, would the claimant be eligible to acquire the extra 6.27 acres, and because that date is the usual date for determining fair market value in situations similar to this. This recommendation is consistent with the President's Asset Management program and the policy that current fair market value be received for lands conveyed out of Federal ownership where existing law does not provide otherwise.

I agree. There is absolutely no reason why the individual in question should not pay today's fair market value for this piece of the public's property.

I very much regret that the Committee rejected an amendment that I offered which would have required payment of fair market value for this land.

I am alarmed at this apparent change in the attitude of the Committee on these matters and view this as a dangerous precedent.

HOWARD M. METZENBAUM.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law would be made by the bill, H.R. 1281, as reported.

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